

REMARKS/ARGUMENTS

Claims Objected to

The Examining Attorney has rejected claims 2, 4, 6-11, 14, 17-20, 22, 24, 26 and 30 as being dependent upon a rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Applicant appreciates the same and is submitting arguments on the underlying base claims, as set forth below, and respectfully requests that the objection be held in abeyance until full consideration of the arguments below can be made.

Anticipation - Section 102(b) Rejection

The Examining Attorney has rejected claims 1, 3, 5, 12, 13, 15, 16, 21, 23, 25, 27, 28, and 29 as being anticipated by Rathert (5,375,967). The Applicant respectfully requests the Examining Attorney reconsider the rejection based on the arguments set forth below.

The rejected claims have been amended to recite that the conveyor or second conveyor flight is a belt conveyor, which is not disclosed in the Rathert reference, and therefore there is no anticipation.

The applicant the submits that Rathert '967 does not anticipate this invention for the following reasons:

1. Rathert '967 is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.

There is no anticipation by a prior patent not known or recognized as being capable of performing the function of the patented device, but rather the prior patent must itself do the teaching. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (1984); Edstrom-Carson & Co. v. Onsrud Machine Works, Inc., 129 U.S.P.Q. 457.

2. Rathert '967 does not disclose the purpose, means or mechanism that this invention discloses, such as the belt conveyor. There is no anticipation where a reference does not disclose the purpose, means and mechanism for accomplishing the instant invention but rather is restricted to a limited and different means. Sperry Products, Inc. V. Aluminum Company of America, 120 U.S.P.Q. 362.

3. The Rathert '967 reference does not disclose each and every element of the claimed invention, as required for a *prima facie* case of anticipation, and as stated more fully above. Rathert '967 does not provide a belt conveyor for the second conveyor flight.

There is no anticipation if the reference does not disclose each and every element of the claimed invention. SSIH Equipment S.A. v. United States International Trade Commission, 718 F.2d 365, 218 U.S.P.Q. 678 (1983).

Applicant has added new claim 31, which is the combination of claim 12 with the rollers allowed in other claims, and which adds no new matter.

Conclusion

Applicant therefore submits Claims 1-31 are in a position to proceed to allowance.

Respectfully submitted,

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